

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RICHIE THOMAS,

PLAINTIFF

-against-

STIPULATION AND
ORDER OF
DISCONTINUANCE
PURSUANT TO RULE 41(A)

NO. 04-CV-579 (FJS)(GHL)

KEVIN O'GRADY; STEPHEN URAM;
MICHAEL DANN; WILLIAM CHILSON;
OFFICER LUPO; TROY MITCHELL,
individually and in their official capacities,
DEFENDANTS

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for plaintiff and defendants O'Grady, Uram, Dann, Lupo, and Mithcell, parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties;

1. Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys fees, and discharges and releases defendants and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further

agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against the defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

2. In addition, plaintiff discontinues with prejudice and on the merits, and agrees not to commence an action based upon, the Notice of Intention filed in the New York State Court of Claims under Richie Thomas v. The State of New York, Notice of Intention served on January 10, 2003.

3. Defendants discharge and release plaintiff from any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action.

4. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

5. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

6. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits or their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by the parties to any generally applicable policy or procedure in the future.

7. Following the execution of this stipulation, and its being ordered by the Court,

defendants shall pay to plaintiff and his attorney the sum of \$19,800.00 in full settlement of any and all claims. Payment by defendants of this amount shall be made in two checks. The first check shall be drawn to the order of the plaintiff, Richie Thomas, 89-A-9370, in the amount of \$9,800.00 and mailed to him at his resident correctional facility, Attica Correctional Facility, Box 149, Exchange Street, Attica, New York 14011-0149, for deposit in the plaintiff's inmate facility/departamental account. The second check will be payable to plaintiff's attorney David M. Giglio, Esq., in the amount of \$10,000.00, and will be mailed to Mr. Giglio at 231 Elizabeth Street, Utica, New York 13501. These amounts include all sums to which plaintiff is entitled, including but not limited to damages, costs, and attorney's fees.

8. Payment by defendants of the amount specified in paragraph 7 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law.

9. This stipulation shall be null and void if the approvals referred to in paragraph 8 are not obtained, and this action shall then be placed back on the trial calendar without prejudice.

10. Payment of the amounts referenced in paragraph 7 will be made within one hundred and twenty (120) days after approval of this stipulation by the Court and receipt by defendants' counsel of a copy of the so-ordered stipulation.

11. The foregoing constitutes the entire agreement of the parties.

Dated: Attica, New York
Dec. 4th, 2008

Richie Thomas
Richie Thomas


Sworn to before me
this 5th day of DECEMBER, 2008

Richard H. Penkalski
Notary Public

Richard H. Penkalski
Notary Public, State of New York
No. 01PE5032915
Qualified in Erie County
Commission Expires September 6, 2010

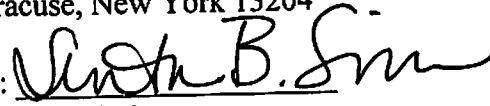
Dated: Utica, New York
December 15, 2008

DAVID M. GIGLIO, ESQ.
Attorney for plaintiff Richie Thomas
231 Elizabeth Street
Utica, New York 13501


David M. Giglio, Esq.
Bar Roll No. 601758


Dated: Syracuse, New York
12/19, 2008

ANDREW M. CUOMO
Attorney General for the State of New York
Attorney for Defendants
Office of the Attorney General
615 Erie Boulevard West, Suite 102
Syracuse, New York 13204

By: 
Senta B. Siuda
Assistant Attorney General, of Counsel
Bar Roll No. 104416

Dated: Syracuse, New York
12/30, 2008

SO ORDERED:


HON. FREDERICK J. SCULLIN
UNITED STATES DISTRICT JUDGE